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U.S. Citizenship
and Immigration
Services

01

[REDACTED]

FILE:

[REDACTED]
SRC 01 025 51661

Office: TEXAS SERVICE CENTER Date: JAN 28 2005

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister of evangelism and community ministry. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary qualified as authorized clergy at the time of filing.

On appeal, the petitioner documents the beneficiary's January 2004 ordination.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The revocation rests on two issues, the beneficiary's experience and his qualifications. Because these two issues are somewhat intertwined in this proceeding, we shall consider them together. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 30, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(2) defines "minister" as an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for all or part of the past two years.

██████████ senior pastor of the petitioning church, states that the beneficiary "obtained a Master of Divinity degree from the Logos Evangelical Seminary. . . . [The beneficiary] has complet[ed] a one-year Pastoral Internship with the [petitioning church] since July 1, 1999." A job offer letter from ██████████ chairman of the petitioner's church council, indicates that the beneficiary has been "our Pastoral Intern since [he] graduated from Seminary in July of 1999," and that the church "is pleased to offer [the beneficiary] the appointment as Minister of Outreach beginning July 1, 2000." The beneficiary's diploma from Logos Evangelical Seminary is dated June 12, 1999, and transcripts indicate that the beneficiary was actively pursuing studies at the seminary during late 1998 and early 1999.

The petitioner's initial submission contains no evidence that the beneficiary was actively performing religious work (as opposed to studying at the seminary) prior to July 1, 1999. The initial submission indicates that the beneficiary was a student from 1998 to June 1999; a pastoral intern from July 1, 1999 to June 30, 2000; and

minister of outreach from July 1, 2000 onward. Thus, according to the petitioner's own original statements, the beneficiary had only four months of continuous experience as minister of outreach as of the petition's October 30, 2000 filing date.

The director approved the petition on February 15, 2001, and the beneficiary subsequently applied for adjustment of status. As part of that application, the beneficiary executed Form G-325A, Biographic Information, and he indicated on that form that he had been a "student" from December 1996 to July 1999, and a "minister" from July 1999 onward. This is essentially consistent with the above statements and information.

On December 3, 2003, the director issued a notice of intent to revoke. In that notice, the director observed that the petitioner had not shown that the beneficiary had met the two-year continuous employment requirement.

In response to the notice, counsel states:

Studying in the U.S. under F-1 [nonimmigrant student status] may be considered carrying on the vocation "if it can be demonstrated that such study is consistent with the . . . ministerial vocation and provided that the [minister] continues to perform the duties of a minister of religion." Letter, [REDACTED] Acting Ass. Comm. Adjudications CO 204.26-C (May 8, 1992).

Letters written by the Office of Adjudications do not constitute official Citizenship and Immigration Services (CIS) policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Even if [REDACTED]'s letter constituted binding policy, he did not indicate (as counsel claims) that seminary study, itself, constitutes qualifying experience. Rather, [REDACTED] "[c]ontinued study by a priest will be considered as carrying on the vocation of a minister of religion if it can be demonstrated that such study is consistent with the priest's ministerial vocation and *provided that the priest continues to perform the duties of a minister of religion*" (emphasis added). Clearly, [REDACTED] was not referring to the *initial* seminary studies that one undergoes to *become* a minister. Rather, he referred to "*continued* study by [someone who was already] a priest." Also, the studies alone are not qualifying experience. The individual must "perform the duties of a minister" concurrently with those studies. Viewed in context, [REDACTED] letter does not equate seminary study with ministerial experience. Rather, the letter indicates only that an already-established minister, already performing ministerial duties, may simultaneously engage in further study provided that those studies do not interrupt or interfere with the ministerial work.

The director, in the notice of intent to deny, had also observed the lack of evidence that the beneficiary had been ordained as a minister. Counsel asserts that the beneficiary "has served at [the petitioning church] as a minister since 1999." A new, joint letter from [REDACTED] senior pastor, and [REDACTED] vice-chairman of the church council, indicates that the beneficiary "will be ordained." The petitioner's ordination procedure dictates that an individual will not be considered for ordination until "[a]fter two (2) years of satisfactory service," after which time a committee takes up the matter and offers recommendations.